

## REMARKS

Claims 3 and 4 have been amended to cure typographical errors.

**Claims 1, 4-6, and 8-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant submits that, as currently amended, claims 1, 4-6, and 8-13 are not indefinite.**

The Examiner points to a series of antecedent basis defects in claims 1, 4-6, and 8-13, concerning the omission of the word “instrument” before the word “application”. Claims 1, 4, 6, 8, 11 and 12 have been amended to cure the corresponding defects affecting claims 1, 4-6, and 8-13.

The Examiner states that there was insufficient numerical antecedent basis for the limitation “clients” in claim 1. The claim has been amended to cure this defect. Claims 8, 11, 12, and 13 have been similarly amended.

The Examiner states that there is insufficient numerical antecedent basis for the limitation “first protocol” in claims 1 and 4-6. Claims 1 and 4-6 have been amended to cure the defect.

Claims 1, 2, 8, 9, and 11-13 have been amended, reciting “instrument” rather than “instrument system” and making appropriate corresponding corrections to improve consistency with the description of the current invention in the specification.

**Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Schwaller *et al.* (US 6,625,648, “Schwaller”). Applicant submits that these claims as amended are not anticipated by Schwaller.**

First, claims 1, 8, and 13 require that the instrument make measurements of signals that are external to the instrument. In the current office action, the Examiner identifies

console node 20 as the instrument and the test results (col.6, lines 41-52) as the signal measurements required by the claims. The Examiner identifies the endpoint nodes as the clients.

Applicant submits that there is no teaching that console node 20 makes these measurements, and hence, console node 20 cannot be the instrument recited in the claims. Schwaller teaches (column 6, lines 41-52) that data is acquired by the endpoint nodes 14-18 to provide network performance test results for analysis by console node 20. Applicant submits that in the system of Schwaller, the elements that acquire the test results (i.e. make measurement of signals) are the endpoint nodes 14-18. The cited passage teaches that these test results are “obtained by active network testing or passive application monitoring **at the endpoint nodes**”. Hence, the signals that are measured are at the endpoint nodes and obtained by software on the endpoint nodes. Accordingly, to satisfy the limitation of the claims in question that measurements are made by the instrument, the endpoint nodes and the network connecting those nodes must be part of the instrument.

It should also be noted that the measurements made by the endpoint nodes are measurements of the network, which is part of the “instrument”. Hence, these measurements do not satisfy the limitation of the claims with respect to measurements of signals external to the instrument. The Examiner has not pointed to any teaching in the reference that the endpoint nodes make other measurements. Accordingly, Applicant submits that the claim requirement that the instrument makes measurements of signals that are external to the instrument is not taught by Schwaller.

Second, claims 1, 8, and 13 require that the first client be configured to communicate with the instrument using a first client specific protocol. The Examiner points to column 6, lines 19-24 and to column 10, lines 55-64, regarding Internet Protocol (IP) and Simple Network Management Protocol (SNMP) respectively, as providing this teaching, identifying endpoint nodes 14-18 as clients. Applicant submits that the cited passages teach that IP and SNMP are two communication protocols that may be used within the network of Schwaller but do not teach that either one is specific to a particular endpoint node/client. Furthermore, as noted above, the endpoint nodes cannot be the clients and still satisfy the limitations of the claims in question.

Third, claims 1, 8, and 13 require that the first instrument application be configured to communicate using a first instrument application specific protocol. The Examiner points to column 4, lines 59-65 and to column 7, lines 27-34 regarding User Datagram Protocol or Transmission Control protocol (UDP or TCP) and "a test protocol" respectively as providing this teaching.

Applicant submits that the first of the cited passages teaches that UDP is used to transmit inquiries to endpoint nodes/clients, while TCP is used to receive responses from them, but does not teach that either protocol is specific to a given endpoint node/client. Indeed, this passage strongly suggests that each of the endpoint nodes uses both protocols.

In addition, the second of the cited passages concerns a **test protocol** for connections to simulate communications between endpoint nodes, not a communication protocol used for communications between the console node and the endpoint nodes. While it is possible for a test protocol to include a communication protocol, it is not an intrinsic feature of test protocols that they do so. Furthermore, Applicant submits that there is no teaching that the test protocol mentioned by Schwaller is specific to a particular endpoint node. On the contrary, the test protocol must be common to, at the very least, a pair of endpoint nodes.

Accordingly, Applicant submits that Schwaller does not anticipate claims 1, 8, 13 and the claims dependent therefrom.

Claim 11 includes the same limitations discussed above with respect to claim 8, and is allowable for the same reasons. In addition, claim 11 requires a second application, configured to communicate using a second instrument application specific protocol, different from the first instrument application specific protocol. The Examiner points to column 3, lines 20-23 as teaching that there may be more than one application program, and to column 7, lines 31-34 as teaching that the first application specific protocol differs from the second. Applicant submits that at most the second passage teaches that each pair of endpoint nodes may execute a specific test protocol.

As noted above, the endpoint nodes must be the instruments. The test protocols

involve communications between pairs of endpoint nodes, i.e., communications within the instrument, not with a client. Hence, there are additional grounds for allowing claim 11.

Claim 12 includes the same limitations discussed above with respect to claim 8. Applicant submits that claim 12 is allowable for the same reasons. Claim 12 further requires a second client, configured to communicate with the instrument system using a second client specific protocol, different from the first client specific protocol. The Examiner points to column 7, lines 31-34, which teaches that each pair of endpoint nodes may execute a specific test protocol, as providing the teaching that the second client specific protocol differs from the first client specific protocol. As noted above, the endpoint nodes must be part of the instrument to satisfy the other claim limitations. Hence, communications between the test nodes could not be client specific protocols. Furthermore, even if the test protocols are specific to the endpoint nodes, there is no teaching that test protocols involve different communication protocols. Hence, there are additional grounds for allowing claim 12.

Claim 15 has been amended to include the same limitation discussed above with respect to claims 1, 8, and 13 regarding the instrument making measurements of signals external to the measurement. Claim 15 also includes the same limitations discussed above with respect to claims 1, 8, and 13 regarding communication with a client specific protocol, communication with an application specific protocol, and identification of the first instrument application specific protocol by the instrument. As noted above, Schwaller does not teach these limitations. Hence, Applicant submits that Schwaller does not anticipate claim 15 and the claims dependent therefrom.

Claims 2 and 9 depend on claims 1 and 8, respectively, and further require that the instrument record the identification of the first client; causing the instrument to record the identification of the first instrument application; causing the instrument to record the identification of the first client specific protocol; and causing the instrument to record the identification of the first instrument application specific protocol.

The Examiner points to column 10, lines 45-46 as providing the additional teaching. The cited passage concerns an object database, which “provides storage for configuration data and performance results”. First, the claim requires that the instrument record the identification data in question. As noted above, the endpoint nodes and the network connecting those nodes must be part of the instrument. The cited passage refers to the console. Hence, the console would also have to be part of the instrument to satisfy the limitations of the claims. However, in this case, there is no candidate for the “client” in the system.

In addition, the Examiner has not pointed to any teaching that the “configuration data” inherently include the identifications of client, application, and protocols specified in the claims. Hence, there are additional grounds for allowing claims 2 and 9.

Claims 3 and 10 depend from claims 1 and 8 respectively and further require that the first instrument application specific protocol differ from the first client specific protocol. The Examiner points to column 7, lines 31-34 as providing the additional teaching. The cited passage concerns test protocols, each of which is associated with at least one pair of endpoint nodes/clients. Applicant submits that a test protocol does not intrinsically comprise either a client specific protocol used for communication, or an instrument application specific protocol used for communication. Moreover, association with a pair of clients is not equivalent to being specific to one specific client (or one specific instrument application). Hence, there are additional grounds for allowing claims 3 and 10.

Claim 4 depends from claim 1 and further requires repeating the control path creation protocol for the first client and a second application, configured to communicate using a second application specific protocol, differing from the first instrument application specific protocol. The Examiner points to column 7, lines 31-34 as teaching the difference between first and second application specific protocols.

As noted above with respect to claim 11, Applicant submits that the cited passage teaches that each pair of endpoint nodes may execute a specific test protocol, but a test protocol does not inherently comprise an instrument application specific protocol used for

communication, an association with a pair of nodes is not equivalent to being specific to a single node, and the Examiner has identified the endpoint nodes as clients, not applications as specified in the claim. Furthermore, the endpoint nodes must be part of the instrument, and hence, such protocols are not between a client and the instrument. Hence, there are additional grounds for allowing claim 4.

Claim 5 depends from claim 1 and further requires repeating the control path creation protocol for a second client, configured to communicate using a second client specific protocol different from the first client specific protocol. The Examiner points to Figure 1 as showing plural clients and states, “repeating the steps taught by Agarwal” (Applicant assumes the Examiner intended to cite Schwaller) “does not render the invention novel”. First, a rejection for anticipation requires that each limitation be shown in the reference. The Examiner has not shown that this limitation is taught in the reference.

Second, the claim requires two clients. As noted above, the instrument must be the endpoint nodes and the network connecting them. The only other computer shown is in the console. Hence, at most, Schwaller could teach one client.

Finally, the claims require that the second client is taught to use a second client specific protocol that is different from the first client specific protocol. As noted above with respect to claim 12, the Examiner has not pointed to any such teaching. Hence, there are additional grounds for allowing claim 5.

Claim 6 depends from claim 1 and further requires repeating the control path creation protocol for a second client and a second application, wherein the second client is configured to communicate using a second client specific protocol, wherein the second application is configured to communicate using a second instrument application specific protocol, and wherein the second client specific protocol differs from the first client specific protocol. The Examiner points to Figure 1 as showing plural clients and states, “repeating the steps taught by Agarwal” (Applicant assumes the Examiner intended to cite Schwaller) “does not render the invention novel”. As noted above, this is a rejection for anticipation, and hence, each limitation must be shown in the reference. The Examiner has not pointed to the limitation in question in the reference, and hence, a rejection for anticipation is improper.

In addition, as noted above, there is no candidate for the second client, as the endpoint nodes must be part of the instrument.

Third, the issue is not whether the prior art teaches a second client, but whether the second client is taught to use a second client specific protocol that is different from the first client specific protocol. As noted above with respect to claim 12, the Examiner has not pointed to any such teaching. Hence, there are additional grounds for allowing claim 6 and the claims dependent therefrom.

Claim 7 depends from claim 6 and further requires that the second instrument application specific protocol differ from the first instrument application specific protocol. The Examiner points to Figure 1 as showing plural clients and states, “repeating the steps taught by Agarwal” (Applicant assumes the Examiner intended to cite Schwaller) “does not render the invention novel”. As noted above, this is a rejection for anticipation, and hence, each limitation must be shown in the reference. The Examiner has not pointed to the limitation in question in the reference, and hence, a rejection for anticipation is improper.

In addition, as noted above, there is no candidate for the second client, as the endpoint nodes must be part of the instrument.

Further, teaching plural clients is not equivalent to teaching plural instrument application specific protocols, as all clients could use the same protocol. In addition, as noted above with respect to claim 11, Schwaller teaches that each pair of endpoint nodes/clients may execute a specific test protocol, but a test protocol does not inherently comprise a communication protocol, association with a pair of nodes is not equivalent to being specific to a single node, and the Examiner has identified the endpoint nodes as clients, not applications as specified in the claim. Hence, there are additional grounds for allowing claim 7.

Claim 14 depends from claim 13 and further requires that the second instrument application specific protocol differ from the first instrument application specific protocol. The Examiner refers to the rejection of claims 3 and 10. Applicant assumes the Examiner

intended to refer to the rejection of claims 4 and 11, concerning the difference between first and second instrument application specific protocols, rather than to the rejection of claims 3 and 10, concerning the difference between client specific and instrument application specific protocols. As noted above with respect to claims 4 and 11, Applicant submits that Schwaller teaches that each pair of endpoint nodes may execute a specific test protocol, but a test protocol does not inherently comprise an instrument application specific protocol used for communication, an association with a pair of nodes is not equivalent to being specific to a single node, and the Examiner has identified the endpoint nodes as clients, not applications as specified in the claim. Hence, there are additional grounds for allowing claim 14.

**Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwaller *et al.* (US 6,625,648) in view of Sharma *et al.* (US 5,537,417). Applicant submits that as currently amended, claims 16-20 are not obvious in view of the cited prior art.**

As per claim 16 which depends from claim 15, the Examiner states that Agarwal (Applicant assumes the Examiner intended to cite Schwaller) further teaches wherein the control path comprises: a communication logic module configured to receive communications from the first client (see col.10, lines 55-64) which conform to the first client specific protocol (see col.6, lines 19-24: "Internet Protocol" or col.10, lines 55-64: "Simple Network Management Protocol"). The Examiner admits that Schwaller does not explicitly teach translating such communications into communications to which the first instrument application is configured to understand and to which the first instrument application is configured to appropriately react, and transferring the translated communications to the first instrument application. The Examiner looks to Sharma for the missing teachings. The Examiner maintains that it would have been obvious to implement the translation taught by Sharma into the system of Schwaller to enable "applications to work in heterogeneous network environments (see col.1, lines 28-34)".

First, as noted above in responding to the rejection of claims 1-15 as anticipated by Schwaller, Schwaller does not teach all the limitations of claim 15, from which claim 16 depends. Sharma does not provide the missing teachings.



Second, the passages in Schwaller cited by the Examiner do teach that the network may use IP or SNMP protocols, but do not teach that the communications sent from a client is in a different protocol from the protocol in which the communications are received by the console node. Indeed, Schwaller teaches elsewhere (column 4, lines 58-65) that a single protocol, TCP, is used for communication from a client to the console node. Hence, there is no need to translate between protocols in the system of Schwaller.

Accordingly, Applicant submits that claim 16 and the claims dependent therefrom are not obvious in view of the cited prior art.

Claim 17 depends from claim 16 and further requires a server logic module configured to receive the communications from the first client. The Examiner looks to Schwaller for the additional teaching (column 6, lines 56-59). The cited passage and associated Figure 3 teach that server 52, which the Examiner appears to be identifying as the sever logic module recited in the claim, may provide a communication interface for a user. The Examiner has not pointed to any teaching that the users of Schwaller are equivalent to the endpoint nodes, which the Examiner identifies as clients. Applicant submits that at most, Schwaller teaches (column 10, lines 47-52) that the “users” in question are persons “such as a network administrator”, interacting directly with the console node. Hence, there are additional grounds for allowing claim 17.

As per claim 18, which depends from claim 16, the Examiner states that Schwaller teaches the additional requirement that the first instrument application comprise a virtual instrument and an application component logic module, wherein the virtual instrument is configured to receive communications from the communication logic module. The Examiner refers to the rejections of claims 16 and 17 but does not point to any teaching of a virtual instrument in Schwaller or Sharma. Hence, there are additional grounds for allowing claim 18.

As per claim 19, which depends from claim 16, the Examiner states that Schwaller teaches the additional requirement of an additional communication logic module configured to receive additional communications from an additional client, which conform to an additional client specific protocol. The Examiner refers to the rejections of claims 16 and 17

but does not point to any teaching of an additional communication logic module as specified. Hence, there are additional grounds for allowing claim 19.

As per claim 20, which depends from claim 16, the Examiner states that Schwaller teaches the additional requirement of an additional communication logic module configured to receive additional communications from an additional client, which conform to an additional client specific protocol. The Examiner again refers to the rejections of claims 16 and 17. Applicant repeats the arguments presented above with respect to claims 16 and 17. Additionally, as noted above with respect to claim 19, the Examiner does not point to any teaching of an additional communication logic module as specified by the claim. Hence, there are additional grounds for allowing claim 20.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Calvin B. Ward".

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